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March 15, 2019

Via ECF

Honorable Michael A. Shipp, U.S.D.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: Joint Case Status Letter
USI International, Inc. v. Festo Didactic Inc., No. 3:15-cv-08451

Dear Judge Shipp:

Pursuant to Your Honor's text order entered on March 5, 2019, plaintiff USI International, Inc. ("USI" or "Plaintiff") and defendant Festo Didactic Inc. ("Festo" or "Defendant") jointly submit this status letter in the above-referenced case.

This case is a breach of contract and fraud action relating to the sale of Defendant's electronic military equipment to the United States government for delivery to the Military Technical College of Oman ("MTC"). Plaintiff alleges that Defendant provided its net prices to USI to prepare and provide the offer to the MTC and is obligated to pay USI the difference between the contract price and Festo's net price for the equipment in exchange for Plaintiff's enabling the sale. On October 10, 2014, the deal that Plaintiff allegedly originated closed, and Defendant was awarded an approximately \$11.1 million contract to sell the equipment. Defendant to date has not paid Plaintiff any compensation for this contract. Plaintiff therefore commenced this action asserting claims for breach of contract, fraud and unjust enrichment. Defendant denies the allegations.

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Discovery in this case was stayed pending a motion to dismiss in 2016. Plaintiff subsequently substituted counsel in this action on February 21, 2018 and filed a First Amended Complaint (“Complaint”) on June 21, 2018. The parties have been cooperating in diligently pursuing discovery and have exchanged document productions. Non-party discovery has been complicated by the need for discovery from the United States Navy. Freedom of Information Act (“FOIA”) requests and subpoenas were issued to the Navy by Plaintiff’s prior counsel and the parties recently received the Navy’s final production a few weeks ago on February 19, 2019. The parties do not anticipate filing any discovery motions in relation to the Navy production.

Plaintiff has attempted to serve deposition subpoenas on the Navy, but the Navy required that Plaintiff proceed through a formal *Touhy* request pursuant to 32 CFR 725.7. Plaintiff submitted that request to the Navy on February 14, 2019. The Navy approved the request on March 1, 2019 with respect to three of the Navy personnel, and informed us that a fourth individual is deceased. The Navy indicated that these depositions must take place in Florida and further advised that these three individuals will likely not be able to be scheduled together given their active travel schedules. Counsel to the parties are currently cooperating to arrange mutually convenient dates for these depositions, hopefully in April. A separate *Touhy* request is being pursued to obtain the deposition of Lt. Col. Robert Hoffman from the United States Army.

Plaintiff is also seeking to depose a former Festo employee, Jeremy Duggan, who allegedly signed a letter memorializing the agreement between USI and Lab-Volt. Mr. Duggan left Festo during the pendency of this case in December 2017 and currently lives in Ontario, Canada. Plaintiff moved for a letter rogatory to compel Mr. Duggan’s deposition through the Canadian courts, which was recently issued by this Court. Plaintiff has transmitted that Order and letter rogatory to Canadian counsel for proceedings in Ontario to issue the requisite process upon Mr. Duggan. Canadian counsel has advised that there is a hearing date scheduled for June 18, 2019 for the letter rogatory in Canada. Given the integral role of Mr. Duggan and the Navy, the parties both agreed that these non-party depositions should proceed prior to depositions of the parties.

Plaintiff has served notices to depose current Festo employees and Festo has indicated that it intends to take depositions of USI witnesses. Some of these witnesses reside abroad. Counsel have agreed to cooperate to work out dates for these depositions, which will be taken after the non-party depositions are completed. The parties have not identified experts so there will not be any need for expert discovery after fact discovery is completed.

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The parties appreciate the Court's assistance with this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David L. Cook', with a large, sweeping initial 'D'.

David L. Cook
Sills Cummis & Gross P.C.
Counsel to Plaintiff USI

/s/ Gregory F. Hauser

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Counsel to Defendant Festo

/s/ Helen A. Nau

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